

STEVENS & LEE, P.C.
620 Freedom Business Center, Suite 200
King of Prussia, PA 19406
Telephone: (215) 751-2866
Fax: (610) 371-7958
Robert Lapowsky
Email: rl@stevenslee.com

STEVENS & LEE, P.C.
485 Madison Avenue, 20th Floor
New York, New York 10022
Telephone: (212) 319-8500
Fax: (212) 319-8505
Constantine D. Pourakis
Email: cp@stevenslee.com

1818 Market St., 29th Floor
Philadelphia, PA. 19103
Telephone: (302) 425- 2611
Fax: (610) 988 – 0811
Evan B. Coren
Email: ebc@stevenslee.com
Counsel for East Penn Manufacturing Co.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	x	Chapter 11
In re:	:	
	:	Case No. 18-23538 (RDD)
SEARS HOLDING CORPORATION, et al.,	:	(Jointly Administered)
	:	
Debtors.	:	Re: Docket No. 1774
-----	x	Obj. Deadline: January 31, 2019 at 4:00 p.m.

**LIMITED OBJECTION OF EAST PENN MANUFACTURING CO. TO
SUPPLEMENTAL NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES
IN CONNECTION WITH GLOBAL SALE TRANSACTION**

East Penn Manufacturing Co. ("East Penn") asserts this Limited Objection (the "Objection") to the Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction (the "Supplemental Cure Amount Notice"; D.I. 1774). In support of the Objection, East Penn states as follows:

1. On October 15, 2018 (the "Petition Date"), Sears Holdings Corporation and certain of its affiliates, including Sears, Roebuck and Co. ("SRC"), Kmart Corporation ("Kmart"), and Sears Brands Management Corporation ("SBMC", together with Sears Holding Corporation, SRC and Kmart, the "Initial Debtors"), commenced with this Court voluntary cases

under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). Subsequently, three additional affiliates filed voluntary petitions on October 18, 2018, October 22, 2018 and January 7, 2019 (together with the Initial Debtors, the “Debtors”).

2. On November 1, 2018, the Debtors moved this Court for Approval of Global Bidding Procedures (the “Global Bidding Procedures Motion”; D.I. 429) to facilitate sale transactions of substantially all of the Debtors’ assets (the “Assets”), including the assumption and assignment of certain executory contracts.

3. On November 19, 2018, the Court entered the Order Approving Global Bidding Procedures and Granting Related Relief (the “Global Bidding Procedures Order”; D.I. 816), approving global bidding and sale procedures substantially in the form proposed by the Global Bidding Procedures Motion.

4. On January 14, 2019, the Debtors commenced an auction for a sale of the Assets, wherein the offer submitted by Transform Holdco LLC (the “Buyer”) was determined to be the highest and best offer for the Assets.

5. On January 18, 2019, the Debtors filed the Initial Cure Amount Notice. East Penn filed a limited objection to the Initial Cure Amount Notice on January 25, 2019 (the “Initial Limited Objection”; D.I. 1838).¹

6. On January 23, 2019, the Debtors filed the Supplemental Cure Amount Notice. Attached to the Supplemental Cure Amount Notice as Exhibit A-1 is the Supplemental Schedule of Cure Amounts (the “Supplemental Cure Amount Schedule”), which lists additional proposed cure amounts (the “Supplemental Proposed Cure Amount(s)”) in connection with the Debtors’ potential assumption or assumption and assignment of executory contracts.

¹ A draft of the Initial Limited Objection was filed in error and subsequently withdrawn.

7. The Supplemental Cure Amount Schedule lists East Penn as a party to two agreements (the “Supplemental East Penn Contracts”, and together with the “East Penn Contracts” as defined in the Initial Limited Objection, the “EP Contracts”) that the Debtors assert are subject to potential assumption and assignment:

Counterparty Name	Contract Title	Proposed Cure Amount
East Penn Manufacturing Co.,	Critical Vendor Agreement and Third Amendment to Diehard Supply, Sales Agent and Servicing Agreement for Batteries	\$1,429,538
East Penn Manufacturing Co.	Amendment #2 to Diehard Supply, Sales Agent and Servicing Agreement for Batteries	\$0

The Supplemental Cure Amount Schedule lists a Supplemental Proposed Cure Amount of \$1,429,538 for the Critical Vendor Agreement and Third Amendment to Diehard Supply, Sales Agent and Servicing Agreement for Batteries (the “Critical Vendor Agreement”) and a Supplemental Proposed Cure Amount of \$0 for the Amendment #2 to Diehard Supply, Sales Agent and Servicing Agreement for Batteries (“Amendment #2”).

8. East Penn objects to the Supplemental Proposed Cure Amounts pertaining to the Critical Vendor Agreement and to Amendment #2. Both the Critical Vendor Agreement and Amendment #2 relate to the Die-Hard Supply Agreement, and East Penn is owed \$1,140,151.98 under the Die-Hard Supply Agreement, not \$1,429,538, as stated in the Supplemental Cure Amount Schedule.

9. East Penn maintains its prior objection based on the failure to provide adequate assurance of future performance pursuant to section 365(b)(1)(C), as set forth in its Initial Limited Objection.

10. East Penn further objects to the failure to provide adequate assurance of future performance of the EP Contracts pursuant to section 365(b)(1)(C) based upon:

- A. The failure to provide notice as to which legal entity, among the Buyer, an Affiliated Designee² of the Buyer, or a third party, will be the assignee of the EP Contracts.
- B. The high-level financial information regarding the Buyer that was provided to East Penn by letter dated January 24, 2019 does not provide adequate assurance of future performance under the EP Contracts, because there has been no assurance that the Buyer will actually be the assignee of the EP Contracts.
- C. The legal entity that is assigned the EP Contracts and actually sells the batteries provided by East Penn under the EP Contracts must provide adequate assurance of future performance.
- D. Cure amounts associated with the EP Contracts must be paid on or before the Closing Date.

11. East Penn reserves all rights to object to assumption and assignment of the EP Contracts, including objections based on whether such contracts are executory.

WHEREFORE, East Penn respectfully requests that the cure amounts for the EP Contracts be set at the amounts stated herein, that adequate assurance of future performance under the EP Contracts be provided, and that it be granted such other relief to which it may be entitled.

[Signature Page Follows]

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Asset Purchase Agreement, Exhibit B to the Notice of Successful Bidder and Sale Hearing [D.I. 1730].

Dated: New York, New York
January 31, 2019

STEVENS & LEE, P.C.

By: /s/ Robert Lapowsky

Constantine D. Pourakis
485 Madison Avenue, 20th Floor
New York, New York 10022
Telephone: (212) 319-8500
Fax: (212) 319-8505
cp@stevenslee.com

-and-

Robert Lapowsky
620 Freedom Business Center, Suite 200
King of Prussia, PA 19406
Telephone: (215) 751-2866
Fax: (610) 371-7958
rl@stevenslee.com

-and-

Evan B. Coren
1818 Market St., 29th Floor
Philadelphia, PA. 19103
Telephone: (302) 425- 2611
Fax: (610) 988 – 0811
Email: ebc@stevenslee.com

Counsel for East Penn Manufacturing Co.

CERTIFICATE OF SERVICE

Evan B. Coren certifies that he caused to be served a true and correct copy of the attached **Limited Objection To the Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction** via transmission of Notice of Electronic Filing generated by CM/ECF on all parties of record, and on the parties listed below as indicated.

STEVENS & LEE, P.C.

By: /s/ Evan B. Coren

Evan B. Coren
1818 Market St., 29th Floor
Philadelphia, PA. 19103
Telephone: (302) 425 - 2611
Fax: (610) 988 - 0811
Email: ebc@stevenslee.com

Counsel for East Penn Manufacturing Co.

SERVICE LIST

VIA EMAIL

I. Bid Notice Parties

a. Debtors

Rob Riecker: rob.riecker@searshc.com
Luke Valentino: luke.valentino@searshc.com
Mohsin Meghji: mmeghji@miiipartners.com
General Counsel: counsel@searshc.com

b. Debtors' counsel

Ray Schrock, Esq.: ray.schrock@weil.com
Jacqueline Marcus, Esq.: jacqueline.marcus@weil.com
Garrett A. Fail, Esq.: garrett.fail@weil.com
Sunny Singh, Esq.: sunny.singh@weil.com
Ellen J. Odoner, Esq.: Ellen.Odoner@weil.com
Gavin Westerman, Esq.: Gavin.Westerman@weil.com

c. Debtors' investment banker:

Brandon Aebersold and Levi Quaintance: project.blue.rx@lazard.com

II. Buyer Parties

a. Buyer

Kunal S. Kamlani: kunal@eslinvest.com
Harold Talisman: harold@eslinvest.com

b. Counsel

Christopher E. Austin, Esq.: caustin@cgsh.com
Benet J. O'Reilly, Esq.: boreilly@cgsh.com
Sean A. O'Neal, Esq.: soneal@cgsh.com

III. Consultation Parties

a. Bank of America

Paul Leake, Esq.: Paul.Leake@skadden.com
Shana Elberg, Esq.: Shana.Elberg@skadden.com
George Howard, Esq.: George.Howard@skadden.com

b. Wells Fargo Bank

Kevin J. Simard, Esq.: ksimard@choate.com
Jonathan D. Marshall, Esq.: jmarshall@choate.com

c. Committee

Ira S. Dizengoff, Esq.: idezengoff@akingump.com

Philip C. Dublin, Esq.: pdublin@akingump.com

Abid Qureshi, Esq.: aqureshi@akingump.com

Sara L. Brauner, Esq.: sbrauner@akingump.com

VIA FIRST CLASS MAIL

Transform Holdco, LLC
c/o ESL Partners, Inc.
Attention: Kunal S. Kamlani and Harold Talisman
1170 Kane Concourse, Suite 200
Bay Harbor Islands, FL 33154

Sears Holdings Corporation
Attn: General Counsel
3333 Beverly Road
Hoffman Estates, IL 60179

Weil, Gotshal & Manges LLP
Attention: Ray C. Schrock, P.C.,
Ellen J. Odoner, Gavin Westerman and Sunny Singh
767 Fifth Avenue
New York, New York 10153

Cleary Gottlieb Steen & Hamilton LLP
Attention: Christopher E. Austin,
Benet J. O'Reilly and Sean A. O'Neal
One Liberty Plaza
New York, NY 10006